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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/632,370	08/01/2003	Mark Johnston	17001-US	3766

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Kevin J. Moriarty  
Patent Department  
DEERE & COMPANY  
One John Deere Place  
Moline, IL 61265-8098

EXAMINER

BATSON, VICTOR D

ART UNIT	PAPER NUMBER
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3671

DATE MAILED: 11/05/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/632,370

Applicant(s)

JOHNSTON, MARK

Examiner

Victor Batson

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-15 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,2,7-9 and 15 is/are rejected.
- 7) ☒ Claim(s) 3-6 and 10-14 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 8/1/03.
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_.

***Claim Objections***

Claims 2-6 are objected to because of the following informalities: In claim 2, the limitation regarding the slope of the seed entry passage being continuously and uniformly sloped is not understood since figure 2 shows the initial section of the seed entry passage to have a vertical section with no slope, followed by a curved section which transitions into the continuously and uniformly sloped section. Therefore, for examination purposes, the examiner has taken the limitation of claim 2 to be directed to a seed entry passage section that is continuously and uniformly sloped downwardly and rearwardly towards the outlet. Appropriate correction is required.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by Anderson (6,178,901).

Anderson discloses a seed boot 41 comprising an integral body having a seed entry passage extending downwardly and rearwardly from an inlet to an outlet, with a mounting assembly 32 located above the seed entry passage, with the inlet being located in front of the mounting assembly and the outlet located below and behind the mounting assembly as shown in figure 7. Regarding claim 2 (see objection above),

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Anderson shows a lower section of the seed entry passage being continuously and uniformly sloped downwardly and rearwardly towards the outlet.

Concerning the limitation of the seed boot body being cast, this is considered a product-by-process limitation, and the examiner notes that it has been held that even though product-by-process claims are limited by and defined by the process, determination of patentability is based on the product itself. Additionally, the patentability of a product does not depend on its method of production. If the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process. *In re Thorpe*, 227 USPQ 964, 966 (Fed. Cir. 1985) {see MPEP 2113}.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 7-9, 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Anderson (6,178,901) in view of Wendling et al. (6,032,593).

Anderson discloses a seed boot as described previously, however, Anderson uses a sweep to open the furrow instead of a disc.

Wendling et al. teaches that a disc mounted on a bearing assembly, is an equivalent furrow opening means known in the art. Therefore, because these two furrow opening means were art-recognized equivalents at the time the invention was

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made, one of ordinary skill in the art would have found it obvious to substitute the furrow opener disc of Wendling for the sweep of Anderson.

Concerning claim 8, Wendling et al., discloses mounting the seed boot in front of the disc bearing assembly. Regarding claim 15, it is noted that "integral" is sufficiently broad to embrace constructions united by such means as fastening and welding. In re Hotte (CCPA) 177 USPQ 326

### ***Allowable Subject Matter***

Claims 3-6,10-14 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Victor Batson whose telephone number is (703) 305-6356. The examiner can normally be reached on Monday through Friday (except Wednesday).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tom Will can be reached on (703) 308-3870. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

November 2, 2004



Victor Batson  
Primary Examiner  
Art Unit 3671